United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

75-7632

In The

United States Court of Appeals

For The Second Circuit

NEW WATCH-DOG COMMITTEE, THOMAS M. IANDOLI, Ray Cannon, James N[illegible]cki, Ernesto Isaac, Peter Behrens, Anthony Fasolina, Al Be[illegible]ein, Matthew Riccardello, Harvey McLemore, Earl Winthal and John Hajek, on behalf of themselves individually and on behalf of all others similarly situated,

Plaintiffs-Appellants,

vs.

HARRY VAN ARSDALE, JR., President, CHARLES BONO, BEN GOLDBERG, HARRY MENDEZ, ROBERT J. PANCALDO, ELIAS RICK, HOWARD WILLIAMS, Vice Presidents, JOSEPH PARADISE, Secretary, RICHARD WM. ROGERS, SR., Recording Secretary, HERMAN MEYERS, Treasurer, SID PACK, LUIS PEREZ, SAM EASTMAN, LEONARD FINE, ALBERT A. FOSTER, PETER TANNENBAUM, ARTHUR STRICKLAND, EDWARD ZARR, Executive Council Members, as officers of the NEW YORK CITY TAXI DRIVERS UNION, LOCAL 3036, AFL-CIO, and individually; NEW YORK CITY TAXI DRIVERS UNION, LOCAL 3036, AFL-CIO GEORGE MEANY, President, LANE KIRKLAND, Secretary Treasurer, JOSEPH D. KEENAN, PAUL HALL, PAUL JENNINGS, A. F. GROSPIRON, PETER BOMMARITO, FREDERICK O'NEAL, JERRY WURF, JAMES T. HOUSEWRIGHT, MARTIN J. WARD, JOSEPH P. TONELLI, C. L. DELLUMS, RICHARD F. WALSH, I. W. ABEL, MAX GREENBERG, MATHEW GUINAN, PETER FOSCO, FLOYD E.SMITH, S. FRANK RAFTERY, GEORGE HARDY, WILLIAM SIDELL, ALBERT SHANKER, FRANCIS S. FILBEY, LEE W. MINTON, HUNTER P. WHARTON, JOHN H. LYONS, C. L. DENNIS,

BRIEF FOR PLAINTIFFS-APPELLANTS

(Cont'd)

THOMAS GLEASON, LOUIS STULBERG, ALEXANDER J. ROHAN, AL. H. CHESSER, MURRAY H. FINLEY, SOL STETIN, GLENN E. WATTS, Executive Council Members, as officers of the American Federation of Labor and Congress of Industrial Organizations, and individually; the AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,

Defendants-Appellees.

KENNETH J. FINGER
14 Marmaroneck Avenue
White Plains, New York 10601
(914) 949-0308

SEYMOUR M.WALDMAN
501 Fifth Avenue
New York, New York 10017
(212) MO 1-1230
Attorneys for Plaintiffs-Appellants

(9084)

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HARRY VAN ARSDALE, JR., President, et al.,

Defendants-Appellees.

- -

BRIEF ON BEHALF OF PLAINTIFFS-APPELLANTS

STATEMENT OF THE CASE

I. Preliminary Statement

This brief is submitted on behalf of the plaintiffs-appellants herein. This is an appeal from orders of the District Court granting the defendants-appellees summary judgment herein and dismissing the pendent state claims.

II. Statement of Facts

The New York City Taxi Drivers Union, Local 3036, AFL-CIO, (herein referred to as the "union" or "Local 3036"), is the certified collective bargaining representative of all medallion taxicab drivers and inside workers in the City of New York. The union was organized in 1966 and then ratified its

By-Laws and Constitution which had been prepared by the AFL-CIO's Regional Representative. The Constitution and By-Laws established the dues structure for the union, which dues were set at $3.50 per month for all members who work 5 days per week; $2.80 per month for all 4 day per week members, $2.10 per month for all 3 day per week members; $1.40 per month for all 2 day per week members and $.70 per month for all 1 day per week members. These dues were collected for approximately 3 years when, in 1969, an amendment to the union's Constitution and By-Laws, increasing the dues, was proposed on due notice to the membership. The dues increase was approved by the membership by a secret ballot vote at a special membership meeting held on February 11, 1969 (Exhibit Volume, 19 through 26, all references hereinafter made to the Exhibit Volume will be referred to as "EV"). This amendment increased the dues to $3.50 per month for all 4 day per week or "full time" members and to $2.50 per month for all 3 day per week and less or "part time" members and was approved by George Meany, President of the AFL-CIO, in accordance with the union's Constitution and By-Laws (EV18). The dues increase was then implemented by the union. This increase for full time members was above the Directly Affiliated Local Union (DALU) Rules "minimum" (EV16, Article 8 thereof) and

for part time employees was up to the DALU Rules "minimum." It was voted on by both full time and part time members by a secret ballot vote at a membership meeting after full discussion and participation (EV19-21).

Thereafter, in 1970, the method of collecting the dues was changed from a monthly collection to a bi-monthly collection; there was no increase or change at that time in the amount of the dues payable by the members of the union.

The American Federation of Labor and Congress of Industrial Organizations (hereinafter referred to as the "AFL-CIO" or the "federation") is a federation of national or international labor organizations. The federation has adopted a Constitution (EV12) and the Executive Council thereof has issued Rules Governing Directly Affiliated Local Unions (EV16, 17). Local 3036 is a directly affiliated local union. These rules were adopted on February 14, 1956 and amended on August 13, 1957, September 24, 1959, February 16, 1969 and August 1, 1973 and were in existence prior to the passage of the Labor Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. §401 et seq. (herein called the LMRDA). The AFL-CIO's Constitution has no specific, explicit or express authority to change the dues of an affiliate or directly af-

filiated local union.

The plaintiff New Watch-Dog Committee is an employee organization within Local 3036 which is composed of members of the union whose purpose is to promote and encourage democracy within the union, just and equitable treatment of all members and reform and correction of abuses within the union. The individual plaintiffs are all members in good standing of the union.

Plaintiffs were informed by letter from the Secretary of the union, dated September 25, 1974 (EV2), that the union was increasing the dues of all members to $6.00 per month, regardless of category. The union referred to action allegedly taken by the AFL-CIO's Executive Board in July, 1975, raising the minimum dues to be paid by members of directly affiliated local unions (EV1). Notification was given to the local union on August 11, 1975, prior to any action by the AFL-CIO convention.

Plaintiff Thomas Iandoli is the former Secretary of the union. The other plaintiffs are all members in good standing who have been in opposition to the present administration for some time, and were recently involved as complainants before the United States Department of Labor in an unsuccessful attempt to have the 1974 election set aside for illegality and

Irregularities thereof. The plaintiffs have been stifled at a recent union meeting in attempts to speak on union issues and there is considerable antagonism between plaintiffs and the individual defendants, who are the officers and members of the Executive Council of the union.

The aforementioned dues increase by the union to $6.00 per member was implemented and effective as of November 1, 1975. No secret ballot election or secret ballot referendum was held by the local union prior to the implementation of this dues increase. In addition, the union did not hold any meetings regarding this dues increase in order to give the membership and the plaintiffs herein an opportunity to discuss and debate the dues increase.

In the past, the minimum dues as established in the DALU Rules have been generally more than those actually paid by members of this union. The minimum dues "mandated" by the AFL-CIO for DALU members through August 1, 1973 was $2.50 per month but part time Local 3036 members were paying $2.10 per month through 1969. Since August 1, 1973, when the minimum dues to be paid by DALU members were established by the AFL-CIO at $3.00 per month, Local 3036 members working less than 4 days per week were paying only $2.50 per month in dues.

Plaintiffs brought this action and asked for, in essence, the following relief: a secret ballot vote of secret membership referendum on the dues increase and the opportunity to discuss, debate and express their views on the said increase at a membership meeting. In addition, plaintiffs asked that the District Court enjoin the implementation of the dues increase pending the discussion and secret ballot vote. Plaintiffs also asked for damages and attorney's fees.

Plaintiffs claimed that the action of the union herein, in denying them the opportunity to speak at a meeting and oppose this dues increase, was specifically aimed at plaintiffs, as members of the union in opposition to the present administration, and was in violation of their right to free speech under the LMRDA, and also violated the union's duty of fair representation, its Constitution and By-Laws and the DALU Rules.

III. Relevant Statutory Provisions

A. LMRDA, Section 101(a)(2), 29 U.S.C. §411(a)(2) provides:

> "(2) FREEDOM OF SPEECH AND ASSEMBLY. Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views

upon candidates in an election of the labor organization or upon any business properly before the meeting....

(3) DUES, INITIATION FEES, AND ASSESSMENTS. Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on the date of enactment of this Act shall not be increased, and no general or special assessment shall be levied upon such members, except --

(A) in the case of a local organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot;
or
(B) in the case of a labor organization other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days written notice to the principal office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: Provided, That such action on

> the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.
>
> Sec. 102. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

B. The National Labor Relations Act, 29 U.S.C. §159(a), (herein referred to as NLRA) requires that the union fairly represent all members.

IV. Relevant Provisions of the AFL-CIO Constitution (EV12); the DALU Rules (EV16, 17) and the Union's Constitution and By-Laws (EV3 et seq.).

A. AFL-CIO Constitution.

The AFL-CIO is a federation of affiliated national or international unions (Article II), directly affiliated local unions and organizing committees, state and local central bodies, and trade and industrial departments. The integrity of each affiliate is to be maintained and preserved (Article III, Section 4). The National Convention is the supreme governing body of the federation (Article IV) and a procedure is established therein for election of delegates in accordance

with the size of the union. Upon a roll call vote, all delegates are entitled to cast one vote for every member represented (Article IV, Section 17). The duties of the Executive Council are to act as governing body between conventions (Article VIII, Section 2). The Executive Council has the authority to issue specific rules as to directly affiliated local unions (Article XIV, Section 2). Nothing is said in any of the sections regarding dues to be paid by members of directly affiliated local unions although per capita payements and assessments are discussed in several sections (Article XIV, Section 4, Article XV, Section 1, 3, and 4).

B. Local 3036 Constitution and By-Laws.

The dues structure is specifically set forth in the Constitution and By-Laws and amendments thereto (EV3 et seq.) as well as the procedure for amending the Constitution and By-Laws. Any member in dues arrears for three months shall lose all union benefits, rights and privileges.

C. Directly Affiliated Local Union Rules.

Section 8 of the DALU Rules, prior to August 1, 1973, provided that DALUs shall require their members to pay dues of not less than $2.50 per month. After August 1, 1973, the DALUs were amended to require their members to pay dues of not less than $3.00 per month. Any member in arrears shall

be automatically suspended from all rights and privileges of membership. Section 13 provides that no local union is entitled to AFL-CIO defense fund benefits unless the local union requires its members to pay at least $3.00 per month in dues. It is further stated that the Constitution or By-laws of all DALUs must incorporate the substance of Rules 29 through 36. Rule 31 provides that

> "a local union may...increase its...dues only by secret ballot, either (1) at a general or special membership meeting, held after reasonable advance notice of intention to vote on the question at that meeting; or (2) in a membership referendum."

D. Collective Bargaining Agreement.

A union shop is provided therein (Article IV), and the employer must discharge an employee who is not a member of the union. An employee delinquent in dues payment automatically loses all benefits under the Agreement during the tenure of the delinquency (Article IV, Section 6).

ARGUMENT

THE COURT BELOW ERRONEOUSLY GRANTED SUMMARY JUDGMENT TO THE DEFENDANTS.

POINT A. THE ACTION OF THE AFL-CIO IS NOT BINDING ON THE UNION.

The AFL-CIO Executive Council apparently took some action in suggesting the minimum dues to be paid by DALU members be raised (EV14, p. 44). At no time did the AFL-CIO state that this was to be automatically binding upon the local DALUs nor did it amend the DALU Rules (EV17). In fact, the letter from the AFL-CIO indicates that some sort of "implementation" was necessary, such as the secret ballot as required by statute. The AFL-CIO affidavit and the Local 3036 affidavits (Joint Appendix 45-53, all reference to the Joint Appendix shall be "JA") did not allege nor prove that the DALU Rules were amended. It is important to note that the Executive Council dues increase is referred to only as "action" (Kirkland Affidavit, JA58), and not an amendment of the rules, and similarly, in the report of the AFL-CIO Executive Council it was stated that it "determined" that each DALU shall collect $6.00 per month per member dues, not that it amended the DALU Rules to provide that $6.00 per month per member dues should be collected (EV14, p. 44). The report does state the AFL-CIO Constitution and Rules governing

DALUs "provides that the integrity of each directly affiliated local union shall be maintained and preserved" (EV14, p. 44). How better to preserve the DALUs integrity than to allow it to vote to increase its own dues as specified in the statute. The AFL-CIO Executive Council action was only a recommendation and not an amendment of the DALU Rules and as the report to the convention was adopted states, it was only a report for "recommendations for action." As stated by the committee chairman, "these recommendations covering 39 different subject areas are referred by this Committee to the Committee on Resolutions, the Committee on Education and the Committee on Constitution for appropriate discussion and action" (EV13, p. 15). This section of the report merely says that the report "notes also recent Council action dealing with minimum dues of Directly Affiliated Local Unions." Again we note the lack of reference to amendment of the DALU Rules. Certainly the Kirkland affidavit was very carefully drawn to leave the impression that the rules were changed when there is no proof to support this and the rules, in fact, remain as stated in Article 8 of the DALU Rules (EV17), "requiring" $3.00 per month per member dues. These rules (EV17) were the only dues in effect as of November 1, 1975.

Although the AFL-CIO Executive Council states that it "requires" minimum dues be collected from DALU members, this "re-

quirement" can be ignored by the local union, as the AFL-CIO and Local 3036 concede has been done in the past. When the AFL-CIO DALU Rules "required" a minimum dues of $2.50, this union was collecting $.70, $1.40 and $2.10 from many members. When the DALU Rules were changed to "require" a minimum dues of $3.00, this union was collecting $2.50 from many members. There was no "exoneration" of dues from the AFL-CIO and is no evidence nor proof of same. Local 3036, has, in the past, consistently ignored this recommendation as it had the absolute right to do. This court should not let itself be used to give legal authority or mandate to an act of the AFL-CIO where none existed before and where none exists by statute.

Even if the action of the AFL-CIO Executive Council in increasing the minimum dues changed the DALU Rules, this still does not mandate that Local 3036 charge its members this increased amount without a secret ballot vote or referendum. Certainly the best proof of this is that, on August 1, 1973, when the minimum dues were increased under the DALU Rules to $3.00 per member per month, this local union still only collected $2.50 per month from many of its members and until November 1, 1975 only collects $2.50 per month from all part time members.

The AFL-CIO stated at oral argument that a secret ballot vote is required only when the dues are increased above the minimum dues established by the AFL-CIO Executive Council. This is not so and has not been the policy of this union in the past. When there was a dues increase in this union in 1969, the increase was not above the minimum dues at that time and in fact was only to the "minimum" for part timers. Full timers were already at $3.50 per month and remained there. At that time, in the union newspaper giving notice of the dues increase, the following was stated:

> "In conformity with the Landrum-Griffin Act, this section will be voted upon by secret ballot" (emphasis in original) (EV25).

In the union newspaper reporting on the membership meeting and vote on February 11, 1969, the following was stated:

> "LANDRUM-GRIFFIN ACT was reason for secret ballot vote on Proposition No. 5. This proposed amendment [to the union's Constitution] calls for an adjustment in dues and initiation fees for the part-time employee" (EV19).

In that same newspaper, in an article reporting on the vote, it was stated that

> "The last proposal, however, Amendment number 5, entitled, 'Revision In Dues and Initiation Fee Structure,' was voted on by secret ballot in conformity with the Landrum-Griffin Act" (EV20).

The action of the Executive Council was void as having been taken without express authority under the law or the AFL-CIO Constitution. LMRDA, Section 101(3)(B)(iii) provides for action by an Executive Board only pursuant to "express authority" contained in the Constitution of the organization.

> "For the Action of the Executive Council to come within the terms of Sec. 101(a)(3), there must have been express authority for the action in the ILA constitution or by-laws . . . the requirement of 'express authority' is not met by such general grants of power but refers to a provision relating specifically to the imposition of additional dues." King v. Randazzo, 346 F.2d 307 (2nd Cir. 1965).

Similarly, in the instant matter, there is no express constitutional authority for the AFL-CIO Executive Council to increase the dues. Thus its action, in the first instance, was void due to the fact that the Executive Council did not have statutory authority to act and since the AFL-CIO itself is a federation and exempt from the provisions of the LMRDA 101(a)(3)(B) allowing a convention or Executive Council vote only. The action of the AFL-CIO can only be deemed to be suggestive of the procedure for the local, not mandatory. If otherwise, there would be no need to deny DALU members strike benefits if a local did not effectuate the minimum dues suggestion. The strike benefits are the inducement for the local to adopt the

minimum dues suggestion.

"Action initially void could not be retroactively cured." Peck v. Associated Food Distributors, etc., 237 F. Supp. 113 (D.C., Mass., 1965, Wyzanski, District Judge). Thus, even if the AFL-CIO, at its convention, ratified the action of the Executive Council, this was merely a ratification of a void act and could not be effective.

POINT B. THE LOCAL UNION MUST HOLD A SECRET BALLOT VOTE AT A MEMBERSHIP MEETING OR SECRET BALLOT MEMBERSHIP REFERENDUM TO INCREASE DUES.

Local 3036, in 1969, recognized the need for a secret ballot vote to increase dues when it stated in its newspaper "In conformity with the Landrum-Griffin Act, this section will be voted upon by secret ballot" (emphasis in original). It is clear that the union has subverted the legislative language and intention of the framers of the LMRDA to implement a dues increase without the vote of the membership, in direct derogation of the law.

> "Section 101(a)(3) is intended to insure that dues will not be imposed on union members by the mere fiat of their officers." King v. Randazzo, 346 F.2d 307, 309 (1965).

In Sergic v. Cuyahoga, Lake, Geauga & Ashtabula, 423 F.2d 515 (1970), the court enjoined the collection of a dues in-

crease where a mail referendum did not specifically give the members the right to vote only on a dues increase and where the statutory procedure was not rigidly followed. The mandated procedure for approval of a dues increase is an exclusive procedure and must be followed by a local union.

A number of provisions of the "Bill of Rights" are

> "express statutory restrictions and requirements which supersede and invalidate all existing contrary provisions in union governing laws and must be applied to the form prescribed by the law whether or not a majority of the union membership so desires." Hickey, The Bill of Rights of Union Members, 48 Geo. L.J. 226 (1959).

In the instant case the burden on the individual members is very significant. Dues were increased an average of 100% without a vote of the membership. The court, in Local No. 2 v. International Brotherhood of Telephone Workers, 362 F.2d 891, cert. denied, 385 U.S. 947, reviewed the mandated two procedures, one being by secret ballot at a membership meeting upon notice and the other by membership referendum by secret ballot and held that "local unions must follow [one of these procedures] in increasing dues." Local 3036 did not follow either procedure and as stated in the Local 2 case, supra, "the procedure mandated by the statute in question not having been adhered to, the general dues increase as voted was ini-

tially void." The court stated that "where a specific procedure is set forth in the statute, that procedure must be followed." The procedure has not been followed herein and the National Convention of the AFL-CIO or the Executive Council action cannot be used to avoid the statutory procedure. In Steib v. New Orleans Clerks, 436 F.2d 1101 (1971), the Court of Appeals enjoined the defendant union from collecting a dues increase that had not been voted on by secret ballot, although where the national (not a federation) had validly voted a dues increase that was allowed prospectively.

The union herein is clearly avoiding the statutory mandate which requires a secret ballot vote before dues can be increased. This court must enjoin such action and require a vote in accordance with the "explicit and exclusive" methods for authorizing such increases.

In Sergic v. Cuyahoga, Lake, Geauga & Ashtabula, supra, the court stated that:

> "The LMRDA was enacted with the clear purpose of assuring 'the full and active participation by the rank and file in the affairs of the union. American Federation of Musicians v. Wittstein, 379 U.S. 171, 182-183, 85 S. Ct. 300, 307, 13 L. Ed. 2d 214 (1964). The Congress by passing a 'Bill of Rights' for union members determined that the efficiency of a monolithic union under autocratic rule was gained at too great a price if it necessi-

tated any sacrifice in the members' rights to determine the course of their organization. The balance was struck in favor of union democracy. Only a union responsive to the rights of all its members can achieve the ideals of responsibility, opportunity and self-determination that are recognized as fundamental values in the labor movement" citing Navarro v. Gannon, 385 F.2d 512, 518 (2nd Cir.).

"In enacting this statute Congress intended to restore to members of labor unions the right to participate freely in the government of their union. This necessarily would include the right to vote 'yes' or 'no' on increases of dues without coercion.

Union members are entitled under the Act to the right of a meaningful vote on increases in dues or assessments." Id. at 521.

POINT C. THE COURT BELOW, IN HOLDING THAT THE EXCLUSION OF THE AFL-CIO FROM THE LMRDA, SECTION 101(a)(3) ALLOWED IT TO MANDATE AN INCREASE OF THE DUES OF MEMBERS OF THE LOCAL UNION HEREIN WITHOUT A SECRET BALLOT VOTE OR SECRET REFERENDUM, WAS IN ERROR.

The LMRDA states that

> "except in the case of a federation of national or international labor organizations...dues...payable by members of any labor organization...shall not be increased...except (A) in the case of a local labor organization...[by a secret ballot or secret referendum vote]... 29 U.S.C. §411(a)(3).

The AFL-CIO and the local union involved herein argued that this section allows the AFL-CIO to raise the dues of any members of any labor organization, particularly those directly affiliated with the AFL-CIO. They further argued that the status of being directly affiliated required the local union to be treated in the same manner as a local union of a national or international, which would be bound by the action of the national or international in increasing dues by action of the Executive Board where express authority was provided or by action of the delegates voting at the regular convention (LMRDA, section 101(a)(3)(B)(i) and (iii), 29 U.S.C. §411(a)(3)). The court below, in finding that the AFL-CIO was specif-

ically excluded from the requirements of this section, held that dues of local union members could be increased by the AFL-CIO as was done herein, without the required secret ballot or secret referendum vote.

The defendants-appellants argue that the above result is derived from a misreading of the statute case law, legislative intent, legislative history and labor union history. The fact that the AFL-CIO is excluded from these sections of the Act does not give it the authority to raise the dues of all local union members. Rather it was intended only to allow the AFL-CIO to raise per capita payments from its members, member unions of the AFL-CIO without the necessity of complying with the voting requirements of the Act. The court failed to consider the second "except" in 101(a)(3) which mandates a secret ballot or secret referendum vote in the case of a local organization irrespective of what the AFL-CIO or any federation does. Sub-section (A) of 101(a)(3) must stand on its own, and the first sentence of section 101(a)(3) excepting a federation does not apply to a local organization. This is further proven by the fact that sub-section (B) specifically excepts the federation again, an exception that would not be necessary if the first sentence of section (3) modified sub-sections (A) and (B). If the first sentence of section (3) excepted the AFL-CIO from

what it could do to a local organization and allowed it to raise the dues of the members of a local union without a secret ballot vote or secret referendum applied to sub-section (A), then there would be no need for the last word in section (3) - "except." The fact that the word "except" was inserted as the last word of section (3) was intended to omit local organizations from the federation exception, and mandate the secret ballot vote or secret referendum vote in the case of a local organization, even if a federation suggests or mandates a dues increase for members of a local organization.

King v. Randazzo, 346 F.2d 307 (1965), a Second Circuit case, has been cited to stand for the proposition that

> "the requirement of a secret ballot is an absolute protection for the working man, and any vote that dispenses with it is invalid as repugnant to the statute." White v. King, 64 L.C. Par. 11, 273 (D.C. La. 1970).

In construing the Act, the court should first look to the plain meaning of words as they have been actually enacted by Congress. Hughes v. Local 11, International Ass'n. of Bridge Workers, 287 F.2d 810 (3rd Cir.) cert. den. 368 U.S. 829, 82 S.Ct. 54 (1961). The statute plainly states that dues of a local organization can only be increased by "majority vote by secret ballot..." or by "majority vote...in a membership referendum conducted by

secret ballot."

The LMRDA "Bill of Rights" was intended to protect the individual members of a labor organization and to limit the power and autocracy of the leadership of the labor unions in this country, whether they be local unions, national or international unions, or a federation such as the AFL-CIO. Local union members were to be absolutely guaranteed freedom of speech, assembly and discussion and the absolute right to have a say, by secret ballot, as to any increase in dues. The specified methods of increasing dues were obviously meant to be exclusive and it was never intended that the basic Bill of Rights was to be subverted or avoided as attempted by Local 3036 and the AFL-CIO herein. If the AFL-CIO and Local 3036 were to prevail in this action the court would be saying that, in essence, no local union member has the Bill of Rights protection afforded him by statute insofar as an arbitrary dues increase by the AFL-CIO is concerned and that sub-section (A) is meaningless. In fact, if that happened, the union member would have not gained by the Bill of Rights, but would have lost in that he would have lost the protection from the union's own Constitution that would have to be amended prior to a dues increase, a protection that was in existence through the DALU Rules prior to the passage of the LMRDA. Congress certainly

intended to increase the rights and protection of the individual union members, not lessen them as would be the result if the court approves the AFL-CIO action herein. Congress could not have and did not intend that mere AFL-CIO Executive Council fiat, in which the local not only did not have a vote but did not even have a representative present, could be paramount to the statutory language and legislative intent.

The exclusion of the AFL-CIO from the first paragraph of 101(a)(3) does not mean it can raise dues of a local organization without compliance with 101(a)(3)(A), but merely gave the AFL-CIO the right to raise per capita within its own organization. Rather than being free to do whatever it wants by this exclusion, the AFL-CIO is precluded from doing anything other than raise dues from its own members, not the members of a local organization.

The legislative history supports the position that the Congress was interested in the individual union member and wanted all local union members to vote on a dues increase, particularly in view of the fact that the minimum dues requirement of the AFL-CIO had never been mandatory prior to the Act and has not been so since; and that the Bill of Rights was meant to curb just this kind of action. An analysis of the following legislative history will lead inescapably to this

conclusion.

Section 101(a)(3) was first offered by Senator McClellan as part of the "Bill of Rights" which had been reported by the Senate Committee on Labor and Public Works (S.1555, 86th Cong. 1st Sess.) and was one of the least controversial of the Bill of Rights due to the myriad of abuses relative to union dues. Congress wanted and intended that every union member have the right to vote on a dues increase, irrespective of his other affiliation. The proposed section, on April 24, 1959, was amended pursuant to language drafted by Senator Kuchel, which provided that only three methods of increasing dues were to be allowed, (1) majority vote of the members at a meeting or (2) a referendum through the mails or (3) in the case of a national or international organization, by majority vote at a regular or duly constituted special convention. 2 Leg. Hist. 1232. Rather than being a mere limitation allowing the AFL-CIO to do anything it wanted, which interpretation would certainly be a misreading of the legislative and labor history, this statute was a grant of power, and clearly envisaged only three ways to increase dues, and those three ways are set forth hereinabove. The federation was excluded to allow it to raise per capita payments and it was never intended that it have the power to

mandate a dues increase for a local organization's members without the secret ballot vote,* and indeed the history of the federation supports this interpretation. The Court of Appeals, in this and other circuits, has supported the position of the plaintiffs herein, in allowing a dues increase only in accordance with the exact, explicit and specific statutory language, either by secret ballot of the local membership, or a vote of the national or international pursuant to the statute-not by a federation. See King v. Randazzo, supra; Brown v. Carpenters, 52 L.C. Par. 16, 519 (1964), and supra; Local No. 2 v. International Brotherhood of Telephone Workers, 362 F.2d 891, cert. den. 385 U.S. 947; Seroic v. Cuyahoga, 423 F.2d 515 (1970); Steib v. New Orleans Clerks, 436 F.2d 1101 (1971).

When the above Senate bill went to the House, the Landrum-Griffin Bill was adopted, not the Shelley Bill which was favored by the AFL-CIO and would have given it the protection and rights it now seeks and asks that the courts give it. The AFL-CIO, by its action herein, is seeking to obtain indirectly that which it could not get the Congress to give it directly -- the right to increase local union membership dues without participation of the local union membership. If the Congress had wanted to

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* Senator Morse confirmed this during the legislative debates when he said that the AFL-CIO exclusion was only for the purpose of allowing it to raise per capita dues from unions to the AFL-CIO without a vote.

preserve this alleged right, it could easily have written language into section 101(a)(3)(A) stating that the AFL-CIO can increase dues of local union members without the secret ballot vote. This the Congress would not and did not do. The House did make some changes in Senate section 101(a)(3) but these had to do with other aspects of the section, e.g., to provide that only dues "increases" rather than dues "changes" had to be voted on, that a referendum vote was specifically authorized for only local, national and international labor organizations (not federations) and that the executive board of a national or international (not federations) could make interim dues increases only until the next regular convention of the organization. These changes were specifically made at the request of organized labor and the AFL-CIO. Thus, the House expanded the methods of increasing dues over the Senate bill, but did not include the federation in the expanded methods of increasing dues nor did it allow the federation to increase the dues of local union members without a secret ballot vote or secret referendum. Section 101 was clearly a specific grant by Congress of the method of increasing dues which methods were intended to be exclusive and intended to provide labor organizations with the sole methods of increasing dues. The fact that the AFL-CIO as a federation was excluded clearly means

that Congress did not intend that the AFL-CIO have the power to do something indirectly that Congress did not want done directly -- i.e., increase local union dues without local union membership participation. The Congress placed strong emphasis on insuring that local organization members had the absolute

> "right to participate in deciding upon the rates of dues." (H. Rep. No. 741, 86th Cong. 1st Sess.) U.S. Code Congressional and Administrative News 1959, p. 2429

or

> "to control membership and other fees charged by the union." Id. at 78

or to

> "protect against exorbitant rates or arbitrary changes in dues and fees." (2 Leg. Hist. 1520-Remarks of Rep. Griffin.)

Thus, it is clear that in addition to the explicit statutory language, the legislative history supports the position of the plaintiffs-appellants herein.

An analysis of the rest of the LMRDA also leads to the conclusion that the only interpretation of the statute is that which supports the plaintiffs-appellants herein. Section 401, having to do with elections, also excludes the federation from its provisions. If the reasoning of the AFL-CIO with regard

to this section were followed, it could also be stated that no DALU or local organization has to comply with the statutory requirements for election of officers at least one time every three years as well as all the other safeguards of that section, if the AFL-CIO Executive Council so decreed. The only reasonable interpretation of these sections leads to but one conclusion -- that the exclusion of the AFL-CIO was only to leave it free to handle its own internal affairs, such as per capita dues and AFL-CIO elections of its own officers. See Brown v. Carpenters, 343 F.2d 872, allowing per capita payments but not dues payments unless the statutory procedure is complied with.

Labor history supports the plaintiffs-appellants contentions. The development of labor unions in the United States was primarily one of the development of national and international unions. These are the unions that initially had all the power and the ability to control the dues of the local affiliated members, a right that is recognized in this statute, section 101(a)(3)(B). The AFL and the CIO never had this power, although they did get into organizational efforts, and thus, the DALU Rules. Its requirements, as proven herein, were never mandatory and this fact was specifically recognized by the AFL-CIO Constitution which assures that local unions and directly affiliated local unions are to retain their separate

identities and integrity (EV12, Article III, Section 4).

In American Trade Union Democracy, by William M. Leiserson, (Columbia Univ. Press, 2nd Printing, 1961), the author states, in discussing the distinction between a national union and the AFL-CIO that:

> "There are no individual members of the AFL-CIO. Only unions are members of this labor confederation, as only nations are members of the United Nations....Unlike our own federal government, they do not have direct authority over the subjects or the citizens of the various union governments. They may not tax individual union members, adopt laws, or working rules for them, try them for offenses, discipline or expel them. These are prerogatives of the separate member unions." at p. 85.

Leiserson states that the

> "[AFL-CIO] has no authority over the millions of members within the unions. It cannot try or punish them for offenses, nor can it tax them directly. It gets its funds by taxing the unions on the basis of the size of their memberships. Its guarantee to preserve the integrity and protect the autonomy of each national union is a strict limitation on its powers imposed on it by the union, not a delegation of its powers to them. The federation has only the limited powers enumerated in the constitution." at p. 344.

For the AFL-CIO to argue that it is, in this situation of a Directly Affiliated Local Union, in the same shoes as a national or international labor organization is not consistent

with the legislative history and intent as well as the statutory language. When the LMRDA was passed, in 1959, the DALU Rules had already been in effect for several years. The AFL-CIO had also been in existence for some years. The Congress was cognizant of these facts and specifically eliminated the AFL-CIO from applicability of that portion of the statute which allows a local union dues increase without a secret ballot vote (Sec.101(a)(3)(B)). In excluding a federation of national or international unions from the statutory authority to raise dues by other than secret ballot, the Congress intended to limit the dues increase procedure to a secret ballot vote or referendum except in the case of a national or international union only under Sec. 101(a)(3)(B).

> "The LMRDA provides that the dues of a local union may not be raised except by majority vote by secret ballot of the local membership at a general or special meeting or by majority vote by secret ballot of the members voting in a membership referendum. 29 U.S.C.A. 411(a)(3) (Supp. 1963).
>
> The obvious Congressional intent to prevent the raising of Local dues without a Local vote by secret ballot cannot be frustrated in such a manner. The finding of dues owing a District by a Local should be a Local concern. In any event, the LMRDA is clear that the dues of a Local can be raised only by a secret vote of the Local membership. If the LMRDA proscribes raising of Local dues without a vote of the local membership, National

> cannot bypass the Act and require local dues to be raised without the requisite local vote." Brown v. Carpenters, 52 L.C. Par. 16519 (U.S.D.C. Kans. 1964, rev'd. on other grounds 343 F.2d 872).

Thus, only if there were a national or international union involved herein, could it require the union herein to raise dues without the required local secret ballot vote.

In Local No. 2 v. International Brotherhood of Telephone Workers, supra, the international union imposed a general dues increase. There was a vote at a series of notified affiliated local union membership meetings. The court held that the dues increase was initially void for non-compliance with the statutory provision authorizing an increase in dues rates only by majority vote of the union members in a membership referendum conducted by secret ballot. It stated that the illegally collected increases could not be ratified retroactively by delegates at the regular international convention even after initial action by the Executive Council of the international Thus, even if the AFL-CIO herein legally passed this suggested dues increase, it would not be effective without a vote of the membership in accordance with the statute. See also Ranes v. Office Employees International Union, Local 28, 317 F.2d 915 (1963); United Brotherhood of Carpenters v. Brown, 343 F.2d 872 (1965); White v. King, 319 F. Supp. 122 (1970). In every

one of these cases, the approved dues increase was effectuated after action by the international or national union only, not a federation (citing LMRDA Sec.101(a)(3)(B).

POINT D. THE COURT BELOW WAS IN ERROR IN DISMISSING THE PENDENT STATE CLAIMS.

The pendent state claims were predicated upon the breach of the plaintiffs' free speech rights under the LMRDA Bill of Rights, as well as a breach of the union's duty of fair representation, a violation of the AFL-CIO's DALU Rules and the local union's Constitution and By-Laws. They were substantive allegations and they were worthy of determination by the District Court herein, not outright dismissal.

1. By avoiding the procedure of amending the local Constitution, Local 3036 has effectively denied the plaintiffs the right to open, free and protected discussion of this vital topic of a dues increase, an issue that should be discussed at an open union meeting. As the union Constitution required dues of $2.50 and $3.50 per member per month depending on category, and since the union increased dues to $6.00 per member per month, regardless of category, the union's Constitution had also to be amended to reflect this change. In passing, it is interesting to note that the AFL-CIO requires all national and internationals to instruct their locals to join affiliated central labor bodies in their vicinities, a direction that is frequently ignored. By preventing this dues increase from

coming to a vote to amend the local's Constitution, the AFL-CIO and the local union denied their members the right to discuss, debate and speak at a union business meeting on this issue, a violation of the Bill of Rights clause of the LMRDA. This was brought home by the February 26, 1969 Taxi Drivers Voice article which stated that "Members engaged in full discussion of all proposed amendments before the actual voting took place" (EV20).

Within the last year and one-half, this union has been the subject of two injunctive orders from Judge Frankel of the District Court as to this very issue and Judge Frankel has mandated open and free discussion of issues that the union sought to prevent its membership from debating. Once again Local 3036 attempted to stifle free and open discussion and debate. This is a federal issue under the LMRDA, was treated as a federal issue by Judge Frankel, and irrespective of the District Court's determination of the primary issue herein. The other issues should have been determined by the District Court. The District Court should have enjoined this union from violating its own Constitution and the DALU Rules in an attempt to stifle free and open discussion and debate.

In Pearl v. Tarantola, 361 F. Supp. 288 (1973), the

court stated that

> "Where one of the charges against a member is said to be violative of his free speech as guaranteed by the constitution and the LMRDA, it is best for a court to step in quickly rather than delay the matter with unnecessary administrative steps. First Amendment rights are among the most fragile possessions of a citizen. Delay in deciding the First Amendment issues could not only endanger the free speech rights of plaintiff but of others of similar persuasion. Therefore, this court will not require full exhaustion." Id. at 291.

> "A union has no special expertise in determining issues involving First Amendment rights and their statutory analogs." Id. at 291.

The overriding purpose of the LMRDA was to insure to members of unions the right to self government and union democracy.

> "Ultimately, it is not only free speech and union democracy, but the unions themselves, which will be aided by a decision allowing this limited right of action to remedy the injury of removal from union office when that removal is motivated by a desire to chill membership rights, such as the right to freedom of speech."

The free speech rights of plaintiffs herein are vital and have been effectively abridged and denied by the defendants' action in subverting the specific language and intent of the LMRDA.

POINT E. THE UNION HAS BREACHED ITS DUTY OF FAIR REPRESENTATION TO PLAINTIFFS.

The actions taken by the union are aimed at stifling open and free discussion and debate of the dues increase at a union meeting. This is particularly aimed and directed at the plaintiffs herein, members of the opposition slate to the incumbents within the union. Plaintiffs have been denied fair representation by defendants. Vaca v. Sipes, 386 U.S. 171 (1967). See also Humphrey v. Moore, 375 U.S. 335 (1964). As the Supreme Court said in Vaca v. Sipes, supra,

> "Under this doctrine, the [union's] statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." Id., 386 U.S. at 177.

The union herein, in taking the arbitrary action of preventing an open meeting with resultant discussion and debate as to the issue of the dues increase, has arbitrarily and without good faith denied a substantial segment of its members the opportunity to exercise their guaranteed rights. This is a breach of the union's duty of fair representation.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this court must reverse the decision of the court below and grant summary judgment for the plaintiffs.

Respectfully submitted,

s/ Kenneth J. Finger
Attorney for Plaintiffs-Appellants

A 201 Affidavit of Service by Mail

LUTZ APPELLATE PRINTERS, INC.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NEW WATCH -dOG COMMITTEE, et al
Plaintiffs- Appellants

- against -

HARRY VAN ARSDALE et al,
DEFENDANTS_ APPELLEES Appellees.

Index No.

Affidavit of Service by Mail

STATE OF NEW YORK, COUNTY OF NEW YORK *ss.:*

I. Eugene L. St. Louis *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 1235 Plane Street, Union, N.J. 07083

That on the 5th *day of* January *19*76 *, deponent served the annexed* Brief

upon see attached *attorney(s) for* see attached

in this action, at see attached

the address designated by said attorney(s) for that purpose by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper in a Post Office Official Depository under the exclusive care and custody of the United States Post Office Department, within the State of New York.

Sworn to before me, this 5th *day of* January *19*76 .

Robert T. Green

ROBERT T. GREEN
NOTARY PUBLIC, State of New York
No. 31-0165875
Qualified in New York County
Commission Expires March 30, 1977

Eugene L. St. Louis

Print name beneath signature

EUGENE L. ST. LOUIS

J. ALBERT WOLL
815 15th Street
Washington D.C. 20006
(202) 7 1717
Attorney for Defendants- Appellees

DONALD F. MENAGH
130 East 40th Street
New York, New York 10015
(212) 532 3850
Attorney for Defendants- Appellees
Harrry Van Arsdale and Local Union 3036

SEYMOUR M. WALDMAN
501 Fifth Avenue
New York, New York 10017
(212) MO 11230
Attorney for Plaintiffs- Appellants